

## REMARKS

Claims 1-7 are pending in the application. Claims 1-7 stand provisionally rejected on grounds of obviousness-type double patenting over copending application 09/325,976 (Attorney Docket 1062/B99) and US Patents 5,701,965, 5,971,091, and 5,975,225.

Additionally, all claims stand rejected as anticipated: claims 1-3 by Boyer, claims 1, 2, 4 and 7 by Daniel, and claims 1 and 3-7 by Morrell (Attorney Docket 1062/C15).

Each of copending US Serial No. 09/325,976 and the aforementioned patents referenced by number are commonly owned with the current application, and a terminal disclaimer is enclosed herewith, thereby overcoming any nonstatutory double patenting rejections.

Claim 8 is newly submitted herewith for entry in the case. Claim 8, dependent from claim 1, additionally requires two laterally disposed wheels upon which the device may be made to locomote. These are the “primary wheels,” the minimum set of the device’s ground-contacting members on which the vehicle is capable of operating stably. (Application, p. 4, lines 30 *ff*) Balancing of the device on two wheels is described beginning in the last paragraph of p. 6 of the Application. Claims 2-5 have been amended to incorporate the limitation of new claim 8.

Claim 6 has been amended to insert the words “a dynamically” to modify “balancing work platform.” Dynamic balancing (by motion of components of the device, or of the entire device) is described in the parent application, Serial No. 08/250,693, as discussed below.

Priority dates of the cited references for purposes of anticipating the pending claims are as follows: Morrell (US Patent No. 6,311,794) claims priority from US Ser. No. 08/250,693, filed May 27, 1994, as does also the present application. Daniel (US Patent No. 6,405,831) issued from an application filed November 28, 2000 (and claiming no earlier priority), while Boyer is a Published Application (US 2001/0047905) published on December 6, 2001 (with a potential 102(e) priority, if the application results in the issuance of a patent, no earlier than June 5, 2000).

Claims 1 and 3-7 stand rejected as anticipated by Morrell. However, all of the elements of claim 1 and 6 are fully enabled by the description provided in US Application, Serial No. 08/250,693, which issued as US Patent No. 5,701,965 ("Kamen") on December 30, 1997. Both Morrell and the present application claim priority from the same application. Thus, none of the three references cited as anticipating claims 1, nor Morrell, cited as anticipating claim 6, can properly be applied against either of the independent claims 1 and 6 and their removal as anticipating references is respectfully requested.

More particularly, the requisite elements of claim 1 are described in Kamen at the following passages, and others:

- a. the payload support – may be embodied as seat **12** of Fig. 1 of Kamen, as discussed at col. 3, lines 63-65 of Kamen;
- b. the ground-contacting module – col. 4, lines 8-12;
- c. the motorized drive causing, when powered, automatically balanced operation – col. 5, lines 61-67;
- d. the elevation mechanism – apparent by comparison of Figs. 9 and 10 of Kamen, and described at col. 7, lines 36-45.

Claim 1 is entitled to priority from 08/250,693, and thus allowable over Morrell and each of the other cited references.

Similarly, claim 6 is fully enabled in US Ser. No. 08/250,693. Dynamic balancing (see the last paragraph of col. 5 of Kamen) is achieved by means of the control algorithm described in col. 5 of Kamen, to precisely the same extent to which it is described in the application from which Morrell claims priority, since both applications claim priority from the same parent. Daniel does not teach dynamic balancing, and so cannot anticipate claims 6 or 7.

Claim 8 is allowable over each of the cited references other than Morrell because they fail to teach or suggest dynamic balancing of a device on two wheels. Morrell does teach dynamic balancing of a device on two wheels, but claim 8 is entitled, for the same

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reasons discussed with respect to claim 1, to the same priority date as Morrell and is thus patentable over Morrell.

Claims 2-5 have been amended to depend from claim 8 and are thus patentable over Boyer and Daniel for at least the same reason that claim 8 is.

As to claimed features not taught in the 08/250,693 priority document, Morrell does not teach a counterweight, hydraulic system or piston, and thus claims 3 and 4 are not anticipated by Morrell. To the extent to which footrest **32** of Morrell might read on the "foot" required by claim 5 "for stabilizing the device at a single location," as suggested by the Examiner, that self-same footrest appears as item **22** in the parent 08/250,693 priority document (see Kamen, Fig. 2) and therefore entitles the present claim 5 to the same priority date as Morrell. Claim 5 is therefore patentable over Morrell.

Applicant therefore requests examination of new claim 8 and allowance of all pending claims.

If the Examiner has any outstanding questions, he is invited to call Applicants' undersigned representative at 617-443-9292.

Respectfully submitted,



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